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SMALL ENTITY COMPLIANCE GUIDE

INCENTIVE AUCTION OF UPPER MICROWAVE FLEXIBLE USE SERVICE LICENSES IN THE 37 GHZ, 39 GHZ, AND 47 GHZ BANDS FOR NEXT-GENERATION WIRELESS SERVICES (Auction 103 Procedures)

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This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking docket. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

This Small Entity Compliance Guide (SECG) is designed to help individuals and small businesses understand the filing requirements and other procedures for the Commission's auction of Upper Microwave Flexible Use Service (UMFUS) licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands, which were established in the Commission's *Auction 103 Procedures Public Notice*.¹ This guide **is not a substitute** for reading and reviewing orders, rules, and public notices applicable to the auction, nor is it a substitute for legal advice on how the competitive bidding rules apply to your circumstances.

The Commission established Auction 103 to further progress toward deploying fifth-generation (5G) wireless, the Internet of Things (IoT), and other advanced spectrum-based services at frequencies above 24 GHz. The *Auction 103 Procedures Public Notice* provides details regarding the procedures, terms, and conditions, as well as dates and deadlines,² governing participation in Auction 103, and an overview of the post-auction application and payment processes. Additional materials to assist small entities in complying with the rules and procedures for Auction 103 can be found on the Auction 103 website at www.fcc.gov/auction/103. Additional information regarding the service rules established for UMFUS licenses can be found in the *Spectrum Frontiers Orders*³ and associated SECGs.⁴

II. COMPLIANCE REQUIREMENTS

A. Auction Specifics

Bidding in Auction 103 began on December 10, 2019.

- Auction 103 offered new licenses for 3,400 megahertz of spectrum licensed by Partial Economic Area (PEA) service area.⁵
- Each of the bands available in Auction 103 will be licensed on an unpaired basis in 100 megahertz channel blocks by PEA.

¹ *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz bands for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 103; Bidding in Auction 103 Scheduled to Begin December 10, 2019*, Public Notice, 34 FCC Rcd 5532 (2019) (*Auction 103 Procedures Public Notice*).

² This SECG references subsequent public notices establishing relevant dates for Auction 103, where applicable.

³ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016); Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd 10988 (2017); Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 5576 (2018) (collectively, the *Spectrum Frontiers Orders*).

⁴ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al.*, Small Entity Compliance Guide, DA 18-987 (OCBO Sept. 26, 2018); DA 18-896 (OCBO Aug. 29, 2018).

⁵ *Number of Generic License Blocks Available in Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands (Auction 103)*, Public Notice, DA 19-792 (OEA/WTB Aug. 21, 2019).

- A licensee in these bands may provide any services permitted under a fixed or mobile allocation, as set forth in the non-Federal Government column of the Table of Frequency Allocations in Section 2.106 of the Commission's rules.⁶

To qualify to bid in Auction 103, applicants must have complied with the following requirements:

- Timely submission of a short-form application (FCC Form 175) for Auction 103 that was found to be substantially complete, and
- Timely submission of a sufficient upfront payment for at least one of the licenses offered in Auction 103.
 - The timely submitted upfront payment must have been accompanied by a complete and accurate FCC Remittance Advice Form (FCC Form 159) and was required to be made by 6:00 p.m. ET on October 22, 2019, following the procedures and instructions set forth in the FCC Form 159 Instructions.
- An applicant whose application contained deficiencies was provided a limited opportunity to bring its application into compliance with the Commission's auction application rules during a resubmission window.
- All qualified bidders were automatically registered for Auction 103 and mailed the necessary registration materials.
- Parties that timely submitted substantially complete short-form applications are applicants and are subject to certain provisions of the Commission's Part 1 auction rules regarding application requirements and certifications (e.g., joint bidding agreements relating to the spectrum licenses subject to auction) and the rules prohibiting certain communications.

B. Application Procedures

The Commission decided in the *Spectrum Frontiers Orders* to conduct auctions of UMFUS licenses in conformity with the general competitive bidding rules in Part 1, Subpart Q, of the Commission's Rules, 47 C.F.R. §§ 1.2101-1.2114. In the *Spectrum Frontiers Fourth R&O*, the Commission adopted an incentive auction for the Upper 37 GHz, 39 GHz, and 47 GHz bands.⁷

- These procedures are substantially consistent with the auction procedures the Commission has applied to other auctionable services for several years.
- Applicants are required to file short-form and long-form applications to ensure that applicants are qualified to participate in auctions and hold licenses. Certain information required on the short-form application (FCC Form 175) is also necessary to ensure that only applicants that qualify as small businesses or rural service providers receive the bidding credits offered to such entities.

Provisions for Designated Entities

⁶ 47 CFR § 30.6.

⁷ See *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Fourth Report and Order, 33 FCC Rcd 12168 (2018).

In Auction 103, bidding credits are available to applicants demonstrating eligibility for a small business or a rural service provider bidding credit and subsequently winning license(s). Bidding credits are not cumulative—for each auction, an applicant is permitted to claim either a small business bidding credit or a rural service provider bidding credit, but not both.

For Auction 103:

- A bidder with attributed average annual gross revenues that do not exceed \$55 million for the preceding three years is eligible to receive a 15 percent discount on its winning bid.
- A bidder with attributed average annual gross revenues that do not exceed \$20 million for the preceding three years is eligible to receive a 25 percent discount on its winning bid.
- A bidder satisfying the eligibility requirements for a rural service provider bidding credit is eligible to receive a 15 percent discount on its winning bid.

The *Auction 103 Procedures Public Notice* established caps on the total amount of bidding credits that may be awarded to an eligible small business and rural service provider in Auction 103.⁸

- There is a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business.
- There is a \$10 million cap on the total amount of bidding credits that may be awarded to an eligible rural service provider.
- No winning designated entity bidder may obtain more than \$10 million in bidding credits in total for licenses won in markets with a population of 500,000 or less.

C. Bidding Procedures

The Office of Economics and Analytics (OEA), in conjunction with the Wireless Telecommunications Bureau (WTB), adopted an ascending clock auction design with two phases.⁹ In the first phase of the auction—the clock phase—bidders indicated their demands for a number of generic license blocks in specific categories and geographic areas (i.e., PEAs). In the second phase—the assignment phase—winning clock-phase bidders were provided with an opportunity to bid for their preferred combinations of frequency-specific licenses, consistent with their clock-phase winnings, in a series of single sealed-bid rounds conducted by PEA or, in some cases, PEA group. Additional procedures adopted for Auction 103 include:

- a specific minimum opening bid amount for generic blocks in each PEA available in Auction 103;
- a specific upfront payment amount for generic blocks in each PEA available in Auction 103;
- establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment;
- use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating;
- a requirement that bidders be active on between 90 and 100 percent of their bidding eligibility in all regular clock rounds;

⁸ *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5558, para. 79.

⁹ *Id.* at 5580, para. 153.

- establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a methodology for calculating such amounts;
- a proposed methodology for processing bids and requests to reduce demand;
- bid removal procedures and prohibition of withdrawals;
- a procedure for breaking ties if identical high bid amounts are submitted on a license in a given round;
- establishment of an additional default payment of 15 percent under Section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

Bidding in the clock phase of Auction 103 began on December 10, 2019 and ended on January 30, 2020. Bidding on all generic spectrum blocks in all PEAs was conducted on each business day until bidding stopped on all spectrum blocks in all PEAs.¹⁰ On February 5, 2020, OEA in conjunction with WTB issued a Public Notice announcing the close of clock phase bidding.¹¹ The Public Notice provided information regarding the assignment phase of Auction 103, including the availability of the assignment phase bidding system and data, the mock auction schedule, the Auction 103 Assignment Phase Bidding System User Guide, and an online tutorial on bidding in the assignment phase.¹²

Winning clock phase bidders were sent the Public Notice along with important information necessary to participate in the assignment phase by overnight delivery. Additionally, winning clock phase bidders can access both the user guide and tutorial in electronic form in the “Education” section of the Auction 103 website at www.fcc.gov/auction/103/education.

On March 5, 2020, bidding in Auction 103 concluded following the close of bidding in the assignment phase. On March 12, 2020 by Public Notice, OEA in conjunction with WTB, announced the results of Auction 103.¹³

D. Post-Auction Procedures

Shortly after bidding ended in Auction 103, the Commission issued a public notice declaring that the auction had closed and establishing deadlines for submitting down payments, final payments, and the long-form application (FCC Form 601) for the Auction.¹⁴ Further instructions on these and other filing requirements were provided to winning bidders in the auction closing public notice for Auction 103.

Tribal Lands Bidding Credit

- A tribal land bidding credit is available to any winning bidder that commits to deploying facilities and providing wireless services to qualifying tribal lands.
- For this purpose, qualifying tribal lands are defined as federally-recognized tribal areas that are either unserved by any telecommunications carrier or that have a telephone service penetration rate of

¹⁰ *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5587, para. 177.

¹¹ *Close of Clock Phase Bidding in Auction 103 (Upper 37 GHz, 39 GHz, and 47 GHz); Schedule for Assignment Phase Mock Auction; Availability of Assignment Phase User Guide and Online Tutorial; Assignment Phase Bidding Begins February 18, 2020*, Public Notice, DA 20-120 (WTB/OEA Feb 5, 2020).

¹² *Id.*

¹³ *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands For Next-Generation Wireless Services Closes; Winning Bidders Announced for Auction 103; Down Payments Due March 26, 2020; FCC Forms 601 and 602 Due March 26, 2020; Final Payments Due April 9, 2020; FCC Form 1877 for Incentive Payments Due April 13, 2020*, Public Notice, DA 20-253 (WTB/OEA Mar. 12, 2020).

¹⁴ *Id.*

85 percent or less.

- The tribal lands bidding credit is in addition to, and separate from, any other bidding credit for which the applicant qualifies, such as the small business or rural service provider bidding credit.
- Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal lands bidding credit after the auction when it files its FCC Form 601 post-auction application.
- Further information on tribal lands bidding credits can be found on the Commission's website by going to www.fcc.gov/auctions and clicking on the Tribal Lands Credits link.

Compliance Requirements for Winning Bidders

Additional compliance requirements apply to winning bidders. As with other winning bidders, any small entity that is a winning bidder will be required to comply with the following:

- Within 10 business days of release of the auction closing public notice for Auction 103, submit as a down payment sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission to 20 percent of the net amount of its winning bids;
- Within 10 business days after the down payment deadline, submit the balance of the net amount for each of its winning bids; and
- Within 10 days after the release of the auction closing public notice, electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction 103.
- A winning bidder claiming eligibility for a small business bidding credit or a rural service provider bidding credit must demonstrate its eligibility in its FCC Form 601 post-auction application for the bidding credit sought.¹⁵

The Public Notice issued by the Commission on March 12, 2020 specified deadlines for payments and the filing of long-form applications and provided details for other post-auction procedures, including procedures regarding related incentive payments. Each qualified bidder was sent an email with a link to the location of the Public Notice on the Commission's website. Each qualified bidder was also sent a package that included a copy of the Public Notice, which provides instructions on how to make payments for winning bids, and an envelope for the return of RSA SecurID® tokens used in Auction 103 bidding. In addition to the materials that all qualified bidders received, each 39 GHz licensee that filed FCC Form 175-A for relinquishing spectrum usage rights received a letter with a copy of FCC Form 1877 to provide required acknowledgements and instructions with respect to any incentive payment, along with a copy of the Public Notice.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

Pursuant to Section 1.65 of the Commission's rules, each applicant has a continuing obligation to maintain the accuracy and completeness of information furnished in a pending application, including a pending application to participate in Auction 103. An applicant for Auction 103 must furnish additional or corrected information to the Commission within five business days after a significant occurrence or amend its FCC Form 175 no more than five business days after the applicant becomes aware of the need

¹⁵ 47 CFR § 1.2112(b).

for the amendment. The *Auction 103 Procedures Public Notice* provides instructions for each Auction 103 applicant to maintain the accuracy of its respective short-form application electronically using the FCC Auction Application System and/or by direct communication with the Auctions Division.¹⁶

IV. IMPLEMENTATION DATE

The procedures set forth in the *Auction 103 Procedures Public Notice* became effective upon publication of a summary of the *Public Notice* at 84 Fed Reg. 43046 on August 20, 2019.

Implementation dates and deadlines associated with the execution of Auction 103 can be found in the following Public Notices:

- *Close of Clock Phase Bidding in Auction 103 (Upper 37 GHz, 39 GHz, and 47 GHz); Schedule for Assignment Phase Mock Auction; Availability of Assignment Phase User Guide and Online Tutorial; Assignment Phase Bidding Begins February 18, 2020*, Public Notice, DA 20-120 (WTB/OEA Feb 5, 2020).
- *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands For Next-Generation Wireless Services Closes; Winning Bidders Announced for Auction 103; Down Payments Due March 26, 2020; FCC Forms 601 and 602 Due March 26, 2020; Final Payments Due April 9, 2020; FCC Form 1877 for Incentive Payments Due April 13, 2020*, Public Notice, DA 20-253 (WTB/OEA Mar. 12, 2020).

V. INTERNET LINKS

A copy of the *Auction 103 Procedures Public Notice* is available at:
<https://www.govinfo.gov/content/pkg/FR-2019-08-20/pdf/2019-17792.pdf>

A copy of the Federal Register Summary of the *Auction 103 Procedures Public Notice* is available at: <https://www.govinfo.gov/content/pkg/FR-2018-08-30/pdf/2018-18692.pdf>

A copy of the *Number of Generic License Blocks Available in Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands (Auction 103)* is available at: <https://docs.fcc.gov/public/attachments/DA-19-792A1.pdf>

A copy of the *Close of Clock Phase Bidding in Auction 103 (Upper 37 GHz, 39 GHz, and 47 GHz); Schedule For Assignment Phase Mock Auction; Availability Of Assignment Phase User Guide and Online Tutorial; Assignment Phase Bidding Begins February 18, 2020* is available at: <https://docs.fcc.gov/public/attachments/DA-20-120A1.pdf>

A copy of the *Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands For Next-Generation Wireless Services Closes; Winning Bidders Announced for Auction 103; Down Payments Due March 26, 2020; FCC Forms 601 and 602 Due March 26, 2020; Final Payments Due April 9, 2020; FCC Form 1877 for Incentive Payments Due April 13, 2020* is available at: <https://docs.fcc.gov/public/attachments/DA-20-253A1.pdf>.

A copy of the *2018 Spectrum Frontiers Order* is available at:
https://docs.fcc.gov/public/attachments/FCC-18-73A1_Rcd.pdf.

¹⁶ See *Auction 103 Procedures Public Notice*, 34 FCC Rcd at 5566-68, paras. 98-105.

A copy of the *2017 Spectrum Frontiers Order* is available at:
https://docs.fcc.gov/public/attachments/FCC-17-152A1_Rcd.pdf

A copy of the *2016 Spectrum Frontiers Order* is available at:
https://docs.fcc.gov/public/attachments/FCC-16-89A1_Rcd.pdf